

THE FINANCIAL SERVICES ROUNDTABLE



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MAR 31 2003

Federal Communications Commission
Office of the Secretary

02-278

Re: Notice for Rules and Regulations Implementing the Telephone Consumer Protection Act (CG Docket No. 02-278 and CC Docket No. 92-90)

Dear Sir or Madam:

The Financial Services Roundtable ("Roundtable") appreciates the opportunity to submit comments to the Federal Communications Commission ("FCC") on its Notice of Proposed Rulemaking (NPRM) and Memorandum Opinion and Order pertaining to rules and regulations implementing the Telephone Consumer Protection Act of 1991 (TCPA). The Roundtable is a national association representing 100 of the largest integrated financial services companies providing banking, insurance, securities, and investment products and services to American consumers.

The Roundtable commends the FCC for its ongoing efforts to provide consumers with increased protection against deceptive, fraudulent, and abusive telemarketing sales practices and greater control over their privacy. The Roundtable strongly supports the concept of a centralized "Do Not Call" registry that consumers can use to prevent calls from unwanted telemarketers, provided that: 1) a prescribed regulatory list establishes a uniform national standard, 2) any such list does not impede the ability of companies to communicate with existing customers.

This single "Do Not Call" list is preferable to the multiplicity of lists that now confuse consumers and interfere with commerce around the nation. For the practical reason of relieving consumers and interstate commerce from the growing burdens of multiple state "Do Not Call" lists, the Roundtable supports a single national list. We take this position, knowing that credible arguments have been advanced that such a list could be an abridgement of commercial speech under the U.S. Constitution.

Two important questions posed by the FCC are whether it should reconsider the option of establishing a national do-not-call list as authorized by Congress in the TCPA and whether its actions should be coordinated with the efforts of the Federal Trade

¹Telephone Consumer Protection Act of 1991, Pub.L. No. 102-243, 47 U.S.C. § 227.

Commission (“FTC”) to adopt a rule establishing a national do-not-call registry.² In response *to* these questions, the Roundtable firmly believes that it is appropriate at this time for the Commission to reconsider its prior rejection of the notion of a national “Do Not Call” list and also believes that consumers would have greater protection against fraud if there were one regulatory authority governing this issue.

The Roundtable urges that the following principals be considered in designing a national “Do Not Call” list:

I. THE PROPOSAL SHOULD PROVIDE FOR A CLEAR NATIONAL STANDARD FOR A “DO NOT CALL” LIST AND THAT STANDARD SHOULD PREEMPT ALL OTHER LOCAL LISTS.

The Roundtable believes that if all companies across the nation were able to use a single ““Do Not Call”” list, there would be real benefits in terms of time efficiencies, lower costs, and simplicity. Pursuant *to* 227(c) (3) of the TCPA, the FCC “may require the establishment and operation of a single national database to compile a list of telephone solicitations, and to make that compiled list and parts thereof available for purchase.”

Unless there is established a truly national standard, companies would be required to comply with differing state laws in addition to existing and proposed federal requirements. Furthermore, companies would need to analyze how any federal proposal(s) relates to each state law with respect to conflicts, redundancies, inconsistencies, *etc.* Consumers will be confused about the requirements that apply and whether a particular telemarketing call is a violation of an FCC rule or the applicable state law. Moreover, consumers and companies benefit if there is one standard for all companies, as opposed *to* the inevitable confusion over what is permitted or prohibited under several different regulations.

Accordingly, the Roundtable feels strongly that any FCC proposal should not create another ““Do Not Call”” list without addressing this issue. Any FCC proposal to adopt the national ““Do Not Call”” list approach, should make clear that the national list replaces individual state lists and that the FCC rule preempts any state requirements to maintain such lists.

II. THE SCOPE OF THE PROPOSAL SHOULD BE NARROWED.

Any proposed rule establishing a preemptive, national “Do Not Call” list *should* avoid the pitfalls of an overly broad approach. For example, such a rule should apply only to “unsolicited” calls and should provide specific exemptions for prior or existing business relationships. Additionally, calls to a traditional prospect lead (*e.g.*, a consumer who voluntarily gives his or her phone number to a company as part of a transaction or an

² Seen. 11 and n. 49.

inquiry into products and services) should not be considered “unsolicited,” and therefore those calls should not be subject to the do-not-call provisions.

A. The Proposal Should Not Apply to Established Business Relationships.

Any FCC proposal should ensure that no business is prohibited from making a telephone solicitation to an existing or former customer who has requested to be placed on that company’s do-not-call list. Additionally, any FCC rule should also ensure that a customer’s request to be placed on the company’s do-not-call list does not terminate the business relationship between the company and that customer for the purpose of any future solicitation.

There may be instances when a company contacts a customer as part of servicing the account, but the call develops into what may be considered to be telemarketing. It is impossible to foresee every scenario where a customer service call may become a call whereby the customer is offered improved or related products.

Moreover, consumers are harmed if their financial institution cannot call its customers and inform them of circumstances or new products and services that are clearly beneficial to the customers. The proposal would unnecessarily limit the flexibility of financial institutions to manage their businesses as they deem appropriate by discouraging the use of agents in telephone service centers and in customer contact positions. **As** a result, the proposal interferes with a financial institution’s relationship with its customers and limits the ability of an institution to provide the high quality of service that its customers have come to expect.

Financial services customers save billions of dollars each year from relationship pricing, discounts on a package of products, proactive offers to meet the needs of customers, targeted marketing, and third-party services.³ Existing customers would lose these valuable benefits if inclusion on the ““Do Not Call”” list prevents institutions from calling their own customers about offers for cheaper, more efficient, or otherwise enhanced products. If an individual does not want to hear from his or her financial institution (or other company from which the individual receives goods or services), the individual can ask the company to stop calling.

If the FCC adopts the centralized ““Do Not Call”” list approach, it should provide a clear exception for calls made to individuals with whom a company has an established customer relationship. Additionally, the proposal should allow companies to contact former customers with offers of new products or services, if the customer stopped doing business with that company because it previously **did** not offer such products or services. **An** exception also should be made to allow businesses to contact non-customers (prospects) who have requested information from or about an institution. Finally, an

³ “Customer Benefits from Current Information Sharing by Financial Services Companies,” conducted by Ernst & Young for The Financial Services Roundtable, December 2000.

exemption should be made to allow an institution to return phone calls to any individual who has previously called.

In addition, the FCC should make it clear that any member of a corporate family, including all affiliates and subsidiaries, should be permitted to call an individual on the ""Do Not Call"" list so long as the individual has an established customer relationship with any member of that corporate family. This change is important in order *to* preserve the benefits provided by the Gramm-Leach-Bliley Act (GLBA), the primary intent of which was to provide a statutory framework for improved delivery of financial services for individuals, business, and governmental users, while still maintaining the consumer protections envisioned in the proposal. It should be noted in this regard that affiliated companies work together to service all of the financial needs of the consumer by offering a variety of financial products and services and any exceptions should apply not only to affiliates but also to agents of the seller if the consumer reasonably would expect the agent to be included under the exception.

B. The Rule Should Not Penalize All Predictive Dialers.

The Roundtable recommends that any proposal take into consideration that eliminating the efficiencies gained through predictive dialing would cause a dramatic reduction in productivity with a correspondingly dramatic increase in the costs required to contact the same number of consumers. Many businesses would simply no longer be able to justify the expense of using the telephone or would have to severely reduce the level of marketing via the telephone.

CONCLUSION

In conclusion, the Roundtable respectfully requests that in developing any proposed rules, that the FCC keep in mind the comments offered in this letter and the substantial concerns voiced by businesses impacted **by** the proposal. The FCC should develop requirements that strike an equitable balance of protecting consumers from fraudulent marketing activities and allowing consumers to get timely and beneficial information from companies. Finally, a more thorough discussion of the Roundtable's position on these and other issues raised in the context of a similar proposed rulemaking by the FTC can be found in the Roundtable's letter dated April 15, 2002 @<http://www.firound.org/>.

We thank you for your consideration of our views on these important issues. If you have any further questions or comments on this matter, please do not hesitate to contact Irving Daniels or me at (202) 289-4322.

Sincerely,

Richard M. Whiting